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No. 84-

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

BALDWIN-UNITED CORPORATION
and D. H. BALDWIN COMPANY,
Petitioners,

v.

ROBERT M. EUBANKS, III, INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

ROBERT J. WHITE
DAVID PETTIT
O'MELVENY & MYERS
400 South Hope Street
Los Angeles, CA 90071

ZOË E. BAIRD
Counsel of Record
JACOB M. LEWIS
JAMES P. NEHF
O'MELVENY & MYERS
1800 M Street, N.W.
Washington, DC 20036
(202) 457-5901

Of Counsel:
DEBEVOISE & PLIMPTON
875 Third Avenue
New York, NY 10022

WRIGHT, LINDSEY & JENNINGS
2200 Worthen Bank Building
Little Rock, AR 72201

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QUESTIONS PRESENTED

Petitioners, debtors in federal bankruptcy proceedings, and respondent, the state rehabilitator of insurance company affiliates of debtors, have executed a settlement agreement on all material issues forming the basis of this litigation. Prior to negotiation and execution of the settlement agreement, the Supreme Court of Arkansas issued the opinion to which this petition for a writ of certiorari is directed, upholding application of a state court injunction against petitioners and the federal court. If applicable, the injunction would prevent any further proceedings in federal court to determine claims by petitioners against respondent. In these circumstances, the questions presented are:

1. Should the petition for a writ of certiorari be granted and the opinion of the Supreme Court of Arkansas vacated because execution of the settlement agreement has rendered moot the dispute over the proper forum for adjudication of claims and, thus, there is no live case or controversy at the present time?

2. If the dispute is not moot, may a state court supervising the rehabilitation of insurance companies enjoin the federal court from exercising jurisdiction over claims (and debtors from pursuing claims) in federal bankruptcy proceedings?

PARTIES TO THE PROCEEDINGS

Petitioners are Baldwin-United Corporation and D. H. Baldwin Company.* Respondent is Robert M. Eubanks, III, Insurance Commissioner for the State of Arkansas, as successor in office to Linda N. Garner. Respondent represents, as court-appointed rehabilitator, National Investors Pension Insurance Company, National Investors Life Insurance Company, and Mt. Hood Pension Insurance Company. Other parties below, who are not affected by issues raised in this petition or any that might be raised and whose consolidated appeal was resolved by a separate decision of the Arkansas Supreme Court, *Mendel v. Garner*, 678 S.W.2d 759 (Ark. 1984), are Jack Mendel, G. William Ogden (Trustee for Richard J. Ogden) and Richard J. Ogden.

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* In accordance with Supreme Court Rule 28.1, the parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of petitioners are set forth in App. G hereto.

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ROBERT M. EUBANKS, III, INSURANCE COMMISSIONER
FOR THE STATE OF ARKANSAS,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARKANSAS

Baldwin-United Corporation and D. H. Baldwin Company hereby petition for a writ of certiorari to the Supreme Court of the State of Arkansas in this case.

OPINIONS BELOW

The opinion of the Arkansas Supreme Court, affirming the state circuit court, is reported at 283 Ark. 385, 678 S.W.2d 754 (1984), and appears at App. A. The opinion and order of the circuit court is unreported and appears at App. B.

JURISDICTION

The opinion of the Arkansas Supreme Court, the highest court of the state, was entered on October 22, 1984. On January 10, 1985, Justice Blackmun extended petitioners' time to file a petition for a writ of certiorari to and including March 21, 1985. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

United States Constitution, Article I, Section 8, Clause 4 (the Bankruptcy Clause).

United States Constitution, Article VI, Clause 2 (the Supremacy Clause).

Certain provisions of the Bankruptcy Reform Act of 1978 (the Bankruptcy Code), 11 U.S.C. §§ 101 *et seq.*

Certain provisions of the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015.

Certain provisions of The Bankruptcy Amendments and Federal Judgeship Act of 1984, 28 U.S.C.A. §§ 157, 1334.

The constitutional and statutory provisions involved are reprinted in App. F.

STATEMENT

This case presents fundamental issues concerning the power of state courts to enjoin federal courts from adjudicating in bankruptcy proceedings debtors' claims that certain assets are property of the bankrupt estates. Petitioners, Baldwin-United Corporation and D. H. Baldwin Company (collectively "Baldwin"), are the debtors in the largest federal bankruptcy reorganization proceeding in history. *Stoller v. Baldwin-United Corp.*, 41 B.R. 884, 885-86 (S.D. Ohio 1984). The assets at issue here are vitally needed if Baldwin is to reorganize. They consist of hundreds of millions of dollars in cash and stock of an affiliated company, assets that Baldwin contends were fraudulently or preferentially transferred to related insurance companies. Assets so transferred are property of the debtors' estates and within the federal court's jurisdiction under the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*, and 28 U.S.C.A. § 1334.[1]

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[1] All citations to U.S.C.A. are to West Supp. 1984. (See App. F, 53a n.*.)

The insurance companies holding these assets currently are in rehabilitation in Arkansas under the direction of respondent, the Arkansas Insurance Commissioner (the "Rehabilitator"). The state court asserts that its general jurisdiction over the insurance companies' rehabilitation carries with it the authority to enjoin Baldwin from invoking the jurisdiction of the federal court over its claims, as well as the power to prohibit the federal bankruptcy court from exercising its jurisdiction over those core federal claims. At issue here is the validity of the injunction.

In its decision below, the Supreme Court of Arkansas upheld the state court order enjoining the federal court and the parties to a parallel federal proceeding. It concluded that "since the Bankruptcy Act does not specifically relate to the business of insurance, and indeed expressly excludes insurance companies from being debtors in bankruptcy, [Baldwin] cannot pursue [its] claims under the Bankruptcy Act once enjoined by a valid state injunction." (App. A, 8a.) In so doing, the Arkansas Supreme Court relied on the McCarran-Ferguson Act, 15 U.S.C. §§ 1011-1015, which preserves state regulation of "the business of insurance," and Section 109 of the Bankruptcy Code, 11 U.S.C. § 109(b) and (d), which precludes insurance companies, banks and savings and loan institutions from being debtors under the Bankruptcy Code. The Arkansas Supreme Court's expansive interpretation of these provisions is contrary to substantial precedent of this Court and, if allowed to stand, will seriously undermine the federal bankruptcy system and cast doubt on the applicability of numerous other federal laws to these and other state-regulated institutions.

However, this case does not currently present a live controversy, for after the Supreme Court of Arkansas rendered its decision, the parties executed a Settlement Agreement (the "Settlement") (App. E) that resolves all of the disputed issues between them concerning the above-

described assets.[2] The parties to the Settlement anticipate successful effectuation of all of its terms and have agreed not to pursue further litigation over the assets. Therefore, the issue addressed by the court below—whether the state court may enjoin the bankruptcy court from adjudicating and Baldwin from pursuing its claims against the Rehabilitator in federal court—does not currently present a live case or controversy. Because this Court is without jurisdiction to consider this petition for review on the merits, certiorari should be granted and the judgment of the court below vacated. While it is not anticipated that litigation of the claims will become necessary, this would preserve the rights of the parties should the issue ripen at some point in the future.

If not vacated, the decision of the Supreme Court of Arkansas threatens to undermine the protections afforded Baldwin by the uniform national bankruptcy system. In reaching its result, the Supreme Court of Arkansas has made an extraordinary attempt to prohibit a federal court from assuming jurisdiction granted to it by Congress. The Arkansas court has failed to follow repeated decisions of this Court holding that state courts may not enjoin litigants or federal courts themselves from adjudicating rights granted by federal law. That fundamental error, together with its importance to the many companies with insurance, bank, and savings and loan subsidiaries, merits the attention of this Court.

A. The Proceedings Below And Related Proceedings In The Bankruptcy Court.

Petitioner Baldwin-United Corporation is a publicly owned, diversified financial services holding company and is the corporate parent of a group of companies, including a holding company subsidiary, petitioner D. H. Bald-

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[2] The Indiana Insurance Commissioner, as rehabilitator of three affiliated insurance companies in Indiana with whom petitioners have a similar dispute, also is a party to the Settlement.

win Company. Petitioners are currently in reorganization proceedings under Chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 1101-1174, in the United States Bankruptcy Court for the Southern District of Ohio ("the bankruptcy court"), by Order of Reference from the district court.[3]

On July 13, 1983, the Circuit Court of Pulaski County, Arkansas entered Orders of Rehabilitation for three Arkansas insurance companies, each of which is a subsidiary or affiliate of Baldwin. (See App. C.) The Arkansas companies were primarily engaged in the business of selling and reinsuring single premium deferred annuities ("SPDAs"), which provide a deferred stream of income in exchange for a one-time premium. The Arkansas circuit court appointed respondent[4] as Rehabilitator of the Arkansas companies and ordered the Rehabilitator to take possession of all of their property and to propose a plan for their rehabilitation (the "Plan of Rehabilitation"). Certain of the assets seized by the Rehabilitator pursuant to that order are the subject of this controversy.

As described by the Supreme Court of Arkansas, the Arkansas circuit court's July 13, 1983 orders asserted exclusive jurisdiction over all property in the physical possession of the Arkansas companies and:

> entered an injunction "restraining all persons and other legal entities" from the "making of claims or the commencement of further prosecution of any actions in law or equity or administrative [proceedings] except in this Court", and from "the making of any levy, garnishment or execution against any of the property, personal or real, of [the Arkansas companies] or [their] assets or [their] policyholders."

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[3] *In re The Bankruptcy Amendments and Federal Judgeship Act of 1984*, No. MS-1-84-152 (S.D. Ohio July 30, 1984).

[4] Linda N. Garner, former State Insurance Commissioner and the Rehabilitator originally appointed by the court, was succeeded in office and therefore replaced as Rehabilitator by Robert M. Eubanks, III, in January of this year.

(App. A, 2a.) Further, the court "announced it would not recognize any judgment affecting the Arkansas insurance companies from any other court." (*Id.*, 4a.)

Pursuant to a bankruptcy court order authorizing it to intervene in the Arkansas rehabilitation proceeding in order to "protect the interests of the debtor estates" (App. D, 19a), Baldwin appeared and challenged certain aspects of the proposed Plan of Rehabilitation, including the provisions that continued in effect the state court's injunction and its orders asserting exclusive jurisdiction over property in the possession of the Arkansas companies.[5] The circuit court approved the Plan of Rehabilitation, however, without modifying these provisions. (App. B.)

On October 22, 1984, the Supreme Court of Arkansas affirmed the lower court injunction and assertion of exclusive jurisdiction, stating:

> By [the circuit court] rulings [Baldwin is] enjoined both from bringing [its] claims in bankruptcy court and from petitioning the bankruptcy court to determine whether certain assets should be included in the bankruptcy estate. *The bankruptcy court is also enjoined from attempting to exercise jurisdiction over assets which [Baldwin] assert[s] might be determined to be part of [Baldwin's] bankruptcy estate.*

(App. A, 5a.)[6]

Meanwhile, on September 28, 1984, pursuant to a bankruptcy court order setting a bar date for the submission of proofs of claims, the Rehabilitator filed claims in the bankruptcy court against Baldwin for in excess of $2 billion (specifically reserving any exceptions to the federal

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[5] The bankruptcy court order stated that intervention shall not be deemed "a waiver of the jurisdiction of this Court to determine any claims between Baldwin . . . and the companies involved in the Arkansas . . . Proceedings." (App. D, 19a-20a.)

[6] Emphasis added throughout unless otherwise indicated.

court's jurisdiction). Baldwin subsequently filed counterclaims against the Rehabilitator seeking the return of the hundreds of millions of dollars in assets underlying this dispute that former management transferred to the Arkansas companies.[7] Baldwin asserts that the pre-petition transfers constitute fraudulent and preferential transfers and are void under the Bankruptcy Code, 11 U.S.C. §§ 544, 547 and 548.[8]

The bankruptcy court presently has under submission motions to dismiss or abstain filed by the Rehabilitator that challenge the bankruptcy court's jurisdiction over Baldwin's counterclaims against him and his claims against Baldwin. See p. 13 n.15 *infra*. The Rehabilitator's motions rely, in large part, on the validity of the state court injunction.

B. The Settlement Agreement.

On January 11, 1985, Baldwin and the Rehabilitator entered into the Settlement which, when consummated, will resolve the claims that give rise to the jurisdictional dispute and related injunction that are the subject of this petition. The Settlement provides for the payment of $170 million (subject to adjustment) to the rehabilitators (Arkansas and Indiana) for the benefit of SPDA policyholders and calls for complete releases from Baldwin. Baldwin, in turn, will receive certain affiliate assets currently in the rehabilitators' possession, limited payments, and re-

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[7] In addition, Baldwin filed counterclaims in the bankruptcy court against the Rehabilitator under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b), and the Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C. §§ 1961-1968.

[8] Similar counterclaims by Baldwin are pending in the bankruptcy court against the three related Indiana insurance companies. The Indiana Insurance Commissioner, as rehabilitator, also filed claims against Baldwin identical to those filed by respondent in federal bankruptcy court. The Indiana circuit court approved an identical Plan of Rehabilitation and issued a similar injunction against Baldwin. An appeal from that order is pending in the Indiana Court of Appeals.

leases from both rehabilitators.[9] The Settlement's terms will be incorporated into Baldwin's Plan of Reorganization subject to confirmation by the bankruptcy court.

Effectuation of the Settlement is well under way. It has been approved by all courts from whom approval is required.[10] The Settlement envisions the sale of a substantial Baldwin affiliate (Mortgage Guaranty Insurance Corporation, or "MGIC"), resolution of Baldwin's federal tax obligation and the disposition of certain bank claims against a Baldwin subsidiary. The sale of MGIC was approved by the bankruptcy court on February 19, 1985 and closed on February 28, 1985. Negotiations with the Internal Revenue Service are well along and should be completed within the next 60 days. Negotiations also are ongoing with certain bank creditors.

Although the Settlement is terminable under certain circumstances,[11] it has eliminated the current dispute between the parties over the appropriate forum for litigation of Baldwin's claims against the Rehabilitator.

C. Federal Questions Raised And Decided Below.

The primary issue before the Court at this time is whether the federal questions raised and decided below have become moot by reason of the Settlement, in which case the judgment of the court below should be vacated.[12]

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[9] Throughout its operation, the Settlement requires the mutual cooperation of the parties, imposes certain financial limitations on the parties, and provides for the tolling of all applicable statutes of limitation.

[10] These are the bankruptcy court (February 14, 1985), and the Arkansas and Indiana circuit courts (February 22, and March 20, 1985, respectively).

[11] The Settlement is terminable if no Plan of Reorganization is confirmed by January 15, 1986; or if certain other conditions are not met by July 13, 1986 (subject to adjustment thereafter under certain circumstances).

[12] The parties are obligated to bring the mootness issue to the Court's attention, even though it was not a question below. *See Board of License Comm'rs v. Pastore*, 105 S. Ct. 685, 686-87 (1985) (per curiam).

See DeFunis v. Odegaard, 416 U.S. 312, 316 (1974) (per curiam); *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 & n.2 (1950).

However, several controlling federal questions were raised by Baldwin in its challenge to the Plan of Rehabilitation (R. 1369, 1567-73) and rejected by the courts below. Baldwin unsuccessfully urged in the circuit court and again in the Supreme Court of Arkansas that the injunction was invalid because Baldwin's claims to assets in the possession of the Rehabilitator are within the exclusive jurisdiction of the bankruptcy court and state courts may not interfere with the bankruptcy court's exercise of its exclusive jurisdiction, a question that is a matter of federal law. *See, e.g., Kalb v. Feuerstein*, 308 U.S. 433, 438 (1940); *Texas v. Wellington Resources Corp.*, 706 F.2d 533, 536 (5th Cir. 1983); *Gibbs v. Housing Authority (In re Gibbs)*, 9 B.R. 758, 762-63 (Bankr. D. Conn. 1981). Further, as Baldwin argued in the court below, fraudulent transfer and preference claims under the Bankruptcy Code are core *in personam* proceedings that the state courts may not enjoin federal courts from adjudicating. This, too, is a controlling question of federal law. *General Atomic Co. v. Felter*, 434 U.S. 12, 17 (1977) (per curiam); *Donovan v. City of Dallas*, 377 U.S. 408, 413 (1964).

Baldwin's causes of action against the Rehabilitator were filed as compulsory counterclaims to the closely related claims filed by the Rehabilitator in the bankruptcy court. Both Baldwin's and the Rehabilitator's claims are also interrelated with other claims on file in the bankruptcy case that will be determined by the bankruptcy court. As a result, requiring Baldwin to litigate its claims in a forum other than the bankruptcy court would substantially interfere with its ability to reorganize under the Bankruptcy Code, itself a federal question raised in both courts below.

The Arkansas Supreme Court concluded, however, that certain provisions of federal law that exclude insurance

companies from becoming debtors in bankruptcy, 11 U.S.C. § 109(b)(2) and (d), and that leave to the states regulation of "the business of insurance," 15 U.S.C. § 1012(b), strip the bankruptcy court of the jurisdiction it otherwise has. (App. A, 6a-9a.) This, too, is a controlling question of federal law.

REASONS FOR GRANTING THE WRIT

The Arkansas Supreme Court has rendered an extraordinary opinion holding that a state court may enjoin a federal court from exercising jurisdiction over claims by debtors in bankruptcy to property that may be part of the bankrupt estates. An attempt by a state court to enjoin any federal court from exercising its jurisdiction would be of doubtful validity. Here, federal interests of the highest order are at stake because of the "unrestricted and paramount" power of Congress "to establish uniform laws on the subject of bankruptcies throughout the United States," *International Shoe Co. v. Pinkus*, 278 U.S. 261, 265 (1929), and the goal "to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period," *Ex parte Christy*, 44 U.S. (3 How.) 292, 312 (1845).

The state court's asserted interest in controlling assets in the possession of insurance companies in state rehabilitation proceedings is an altogether inadequate justification for interference with federal court proceedings. While the state courts and not the federal courts have the power to rehabilitate insurance companies, that state power cannot be used to interfere with the reorganization of companies that are within the federal court's bankruptcy jurisdiction. If such state power is legitimated, it could be invoked to enjoin federal courts from exercising jurisdiction over a variety of statutes protecting important federal interests, such as employment discrimination claims that might reduce the assets available to the rehabilitator or copyright infringement actions that might deprive the rehabilitation court

of control over certain property. More importantly, the Arkansas court's parochial view is not limited to insurance companies in rehabilitation. Its conclusion could also deprive the federal courts of jurisdiction over important federal interests affecting failed banks, savings and loan associations, and other entities regulated by states but also subject daily to a variety of federal laws.

The Arkansas court has gone too far. This Court should not condone a state court injunction that prohibits Baldwin from pursuing and the federal court from determining claims (if and when live) to property that may be part of the bankrupt estates.

I. THE WRIT SHOULD BE GRANTED AND THE JUDGMENT BELOW VACATED BECAUSE THERE IS NO CURRENT LIVE CASE OR CONTROVERSY.

The parties have entered into a Settlement that will eliminate the need for litigating the claims underlying this action in any court—federal or state. The only possibility of further litigation is if the Settlement terminates, which is unlikely and in any event cannot occur before January 15, 1986.

There is, therefore, no current live case or controversy between the parties, and the writ should be granted and the judgment below vacated.[13] This is the proper procedure when a case becomes moot pending appeal or consideration of a petition for a writ of certiorari.

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[13] The question whether a case is moot because there is no current live case or controversy "is itself a question of federal [constitutional] law upon which [the Supreme Court of the United States] must pronounce final judgment." *Liner v. Jafco, Inc.*, 375 U.S. 301, 304 (1964). "Even in cases arising in the state courts, the question of mootness is a federal one which a federal court must resolve before it assumes jurisdiction." *North Carolina v. Rice*, 404 U.S. 244, 246 (1971) (per curiam). The federal mootness rule prevails even where, as a matter of state law, a "great public interest in the continuing issues raised by this appeal" exists. *DeFunis*, 416 U.S. at 316.

> That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance. When that procedure is followed, the rights of all parties are preserved . . . .

Munsingwear, 340 U.S. at 40. *See also, e.g., DeFunis*, 416 U.S. at 319-20; *SEC v. Harrison*, 340 U.S. 908 (1951) (per curiam); *Howard v. United States*, 340 U.S. 898 (1950) (per curiam); *Munsingwear*, 340 U.S. at 39 & n.2; *Riley v. International Brotherhood of Teamsters*, 336 U.S. 930 (1949) (per curiam); *Dyer v. City Council of Beloit*, 333 U.S. 825 (1948) (per curiam); *Natural Milk Producers Ass'n v. San Francisco*, 317 U.S. 423, 424 (1943) (per curiam). *Cf. Brockington v. Rhodes*, 396 U.S. 41 (1969) (per curiam). The judgment must be vacated or Baldwin will be seriously prejudiced because there is a possibility the bankruptcy court might be precluded by *res judicata* from determining its own jurisdiction should the Settlement terminate.[14]

The prerequisites for a live case or controversy do not exist at this time because the parties have no current intention or interest in litigating the claims at issue. Indeed, they have embarked on a joint course of conduct intended to preclude such litigation from ever becoming necessary. Thus, "regardless of any decision this Court might reach on the merits . . . the Court cannot, consistently with the limitations of Art. III of the Constitution, consider the substantive [federal] issues" and the case is moot. *DeFunis*, 416 U.S. at 319-20.

The question of where the claims should be litigated if it becomes necessary to do so is " 'abstract, feigned . . . hypothetical' . . . lack[ing] the 'impact of actuality' . . . the concreteness . . . of adversariness." *Alton & Southern*

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[14] *See Underwriters Nat'l Assurance Co. v. North Carolina Life & Accident & Health Ins. Guaranty Ass'n*, 455 U.S. 691, 706-07 (1982); *see also Munsingwear. Cf. Missouri v. Public Serv. Comm'n*, 273 U.S. 126, 131 (1927).

Railway Co. v. International Ass'n of Machinists, 463 F.2d 872, 877 (D.C. Cir. 1972) (quoting *Sibron v. New York*, 392 U.S. 40, 57 (1968)). *See also Rice*, 404 U.S. at 246. At present, rather than being adversaries, the parties have a mutual interest in the success of the Settlement and in maximizing the value of all of Baldwin's affiliate assets. Other parties to the bankruptcy case have asserted very substantial claims derivative of the claims asserted by the Rehabilitator. Because the Settlement depends on a confirmed Plan of Reorganization and because a Plan cannot realistically be confirmed unless those derivative claims are disallowed or subordinated, Baldwin and the Rehabilitator have a mutual interest in avoiding any factual findings against Baldwin in an Arkansas court because other claimants might argue that such a holding has *res judicata* or collateral estoppel effect in the bankruptcy case, thereby depleting the assets available to other creditors and jeopardizing confirmation and, therefore, consummation of the Settlement.

Further, even if the Settlement is not successfully culminated, the parties may renegotiate its terms rather than terminate it and recommence litigation. Whether or not the parties will have reason to pursue the claims again "is purely a matter of conjecture at this point." *SEC v. Medical Committee for Human Rights*, 404 U.S. 403, 406 (1972). Because the "only speculat[ion]" reasonable now is that they will not take this action, the case is moot. *Id.*[15]

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[15] In a recent filing in the bankruptcy court, the Indiana rehabilitator has interpreted the impact of the Settlement as eliminating the adversary nature of this jurisdictional dispute:

> A Settlement Agreement . . . has *resolved this proceeding* [to determine the proper forum for the claims litigation]. . . . [T]his Court need not rule on the Rehabilitators' motions [to dismiss or abstain] unless the Agreement is terminated and this litigation resumes. This Memorandum is filed only to

For these reasons, it is respectfully submitted that this Court should grant the petition, determine that the cause is moot, and vacate the judgment of the Arkansas Supreme Court.

II. THE STATE COURT INJUNCTION IMPROPERLY INTERFERES WITH THE BANKRUPTCY COURT'S JURISDICTION OVER DEBTORS' CLAIMS.

If not moot, this case presents a vital federal question meriting this Court's attention. The Arkansas court order represents an attempt to interfere with the lawful exercise of federal court jurisdiction, not by demanding that a state court ruling be given full faith and credit by a federal court, but by enjoining the federal court, and debtors in bankruptcy under the supervision of that court, from even considering whether it has jurisdiction and, if so, whether it should be exercised. *Cf. Crandall v. Nevada*, 73 U.S. (6 Wall.) 35, 44 (1868) ("[N]o power can exist in a State to obstruct [the] right [of the federal government to transact government business] that would not enable it to defeat the purposes for which the government was established. . . . But if the government has these rights on her own account, the citizen also has correlative rights [including the right to] access to . . . the courts of justice."). The injunction is an extraordinary and extralegal attempt by the state court to interfere with the functioning of the federal courts.

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preserve the Indiana Rehabilitator's arguments in the event his motion requires a ruling in the future.

Reply Memorandum of Indiana Rehabilitator, at 1, *Baldwin-United Corp. v. National Investors Life Ins. Co. (In re Baldwin-United Corp.)*, No. 1-83-02495 (Bankr S.D. Ohio Jan. 25, 1985).

Similarly, the Settlement resulted in dismissal of other litigation between the parties. *See* Order Extending Motion and Briefing Schedule (Jan. 9, 1985) *and* Order Dismissing Appeal (Feb. 14, 1985) in *Eubanks v. Baldwin-United Corp. (In re Baldwin-United Corp.)*, No. C-1-84-1662 (S.D. Ohio) (dismissing the Rehabilitator's objection to the disposition of Baldwin's interest in a limited partnership).

A. The Arkansas Injunction Is An Unlawful Attempt To Limit The Jurisdiction Of The Bankruptcy Court.

The Arkansas Supreme Court upheld the application of a sweeping state court injunction precluding the federal court from exercising jurisdiction over assets that "might be determined to be part of [Baldwin's] bankruptcy estate" and prohibiting Baldwin from seeking the bankruptcy court's "determin[ation] whether certain assets should be included in the bankruptcy estate." (App. A, 5a.) The injunction is wholly without authority and intrudes on an important federal interest. It purports to prevent the federal court from exercising its exclusive jurisdiction over property of Baldwin's bankrupt estates and from deciding whether to exercise its jurisdiction or to abstain in matters within its original (although not exclusive) jurisdiction.

Congress has exercised its broad power under Article I, section 8, clause 4 of the Constitution over bankruptcy matters, *see Kalb v. Feuerstein*, 308 U.S. 433, 438-39 (1940), to subject all issues involving or related to property that may be part of the estate to the exclusive or original (but not exclusive) jurisdiction of the district court, which has referred its jurisdiction over Baldwin to the bankruptcy court pursuant to 28 U.S.C.A. § 157(a). This Court need not determine whether the federal court overseeing Baldwin's bankruptcy proceeding has exclusive or original jurisdiction over debtors' claims, for the challenged state court injunction purports to prohibit the federal court from exercising *any* jurisdiction it concludes it has and prevents Baldwin from asserting its rights under the Bankruptcy Code.

The injunction tramples on the central grant of jurisdiction to the federal courts over bankruptcy matters. In 28 U.S.C.A. § 1334(d), Congress provided that "[t]he district court in which a case under title 11 is commenced or is pending shall have *exclusive* jurisdiction of all of

the property, *wherever located*, of the debtor as of the commencement of such case, and of the estate." [16] 11 U.S.C. § 541(a) defines the "estate" as being "comprised of all of the following property, *wherever located*: . . . all legal or equitable interests of the debtor in property as of the commencement of the case."

That grant of exclusive jurisdiction applies to the assets in dispute here.

> Most important, in the context of this case, § 541(a)(1) is intended to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code. . . . Several of these provisions bring into the estate property in which the debtor did not have a possessory interest at the time the bankruptcy proceedings commenced.

United States v. Whiting Pools, Inc., 462 U.S. 198, 205 (1983).[17] A debtor has a continuing legal or equitable interest in fraudulently or preferentially transferred property, and only the bankruptcy court can determine rights to that property because it is property of the estate within the meaning of 11 U.S.C. § 541(a) regardless of where it is located. *American National Bank v. MortgageAmerica Corp.* (*In re MortgageAmerica Corp.*), 714 F.2d 1266, 1275 (5th Cir. 1983). Thus, the bankruptcy court in which Baldwin's Chapter 11 case is pending by reference from the district court has exclusive jurisdiction over assets of Baldwin that were fraudulently or preferentially transferred. *Texas v. Wellington Resources Corp.*, 706

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[16] The federal courts also have exclusive jurisdiction over Baldwin's securities and RICO claims. 15 U.S.C. § 78aa; 18 U.S.C. § 1964(c).

[17] In *Whiting Pools*, the debtor sought a turnover order pursuant to 11 U.S.C. § 542(a) to recover property that had been seized by the Internal Revenue Service pursuant to a tax lien. This Court held that "the reorganization estate includes property of the debtor that has been seized by a creditor prior to the filing of a petition for reorganization," 462 U.S. at 209, and that the property in question was subject to the bankruptcy court's turnover order.

F.2d 533, 536 (5th Cir. 1983); *Gibbs v. Housing Authority (In re Gibbs)*, 9 B.R. 758, 762-63 (Bankr. D. Conn. 1981). *See also Brown v. Dellinger (In re Brown)*, 734 F.2d 119, 123-24 (2d Cir. 1984); *Missouri v. Bankruptcy Court*, 647 F.2d 768, 774 (8th Cir. 1981), *cert. denied*, 454 U.S. 1162 (1982).

This jurisdiction would be rendered meaningless if a state court were empowered to enjoin a district or bankruptcy court from determining whether assets fraudulently or preferentially transferred constitute part of the debtor's estate. Baldwin's fraudulent and preferential transfer claims seek to effectuate the overriding federal interest in recovering property of a debtor's estate in order to permit effective reorganization of the debtor and fair distribution of assets to all creditors. "The reorganization effort would have small chance of success . . . if property essential to running the business were excluded from the estate. . . . Thus, to facilitate the rehabilitation of the debtor's business, all the debtor's property must be included in the reorganization estate." *Whiting Pools*, 462 U.S. at 203.

Even proceedings related to property of the estate that are not subject to the exclusive jurisdiction of the federal court are nevertheless within its original (but not exclusive) jurisdiction until and unless the federal court elects to abstain in favor of another court. 28 U.S.C.A. § 1334 provides in part:

> (b) *Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.*
>
> (c) (1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceed-

ing [within its original but not exclusive jurisdiction].

Civil proceedings to recover fraudulent or preferential transfers arise under title 11, and Section 1334 gives the federal court sole authority to decide whether it should hear such civil proceedings or abstain. *See also* H.R. Rep. No. 595, 95th Cong., 1st Sess. 51 (1977), *reprinted in* 1978 U.S. Code Cong. & Ad. News 5963, 6012. A state court simply cannot employ its injunctive powers to require, in effect, federal court abstention, for whether to abstain is itself a question reserved by Congress to the federal court.[18]

The bankruptcy court's interest in not being precluded from exercising its jurisdiction is particularly acute in this case since fraudulent and preferential transfer claims derive from federal law.[19] Adjudicating such claims is a

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[18] The bankruptcy court's jurisdiction over debtors' fraudulent and preferential transfer claims survives this Court's plurality decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982). *Northern Pipeline* invalidated only bankruptcy court jurisdiction to decide matters not arising under the federal bankruptcy laws that could have been brought in a state court independent of any bankruptcy proceeding. *Salomon v. Kaiser (In re Kaiser)*, 722 F.2d 1574, 1580 (2d Cir. 1983). It in no way affected the jurisdiction of bankruptcy courts over traditional bankruptcy matters. *Id.* The fraudulent and preferential transfer claims at issue here arise under the Bankruptcy Code and involve "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power," and thus are subject to adjudication by an Article I court. *See* 458 U.S. at 71; *Kaiser*, 722 F.2d at 1580 n.2.

The limited scope of *Northern Pipeline* was recognized by Congress in the enactment of The Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, §§ 101, 104, 98 Stat. 333, 340, which expressly authorizes bankruptcy judges to hear "all core proceedings arising under title 11," including actions to determine, avoid and recover preferences and fraudulent transfers. *See* 28 U.S.C.A. § 157(b)(1), (2)(F) and (H); *see* 1 *Collier on Bankruptcy* § 3.01 at 3-26 to -29 (L. King 15th ed. 1985).

[19] These claims are based on either federal substantive law pursuant to 11 U.S.C. §§ 547 (preferences) and 548 (fraudulent con-

traditional function of bankruptcy courts. These claims are rarely, if ever, litigated in state courts. In 1984, Congress designated fraudulent transfer and preference claims as "core" bankruptcy matters. *See* 28 U.S.C.A. § 157(b)(2)(F) and (H). "Core" matters have been determined by Congress to be particularly important functions of the bankruptcy court.[20]

In sum, a state court cannot, through the guise of a preemptive injunction, foreclose a federal court from exercising its congressionally mandated bankruptcy jurisdiction, be it exclusive or original.

B. The Arkansas Injunction Violates The General Principles Governing The Relationship Between State And Federal Courts.

Apart from the special considerations that attach to the exercise of federal jurisdiction over bankruptcy matters, the Arkansas court's injunction violates well-settled principles governing the relationship between state and federal courts. Under the Supremacy Clause, U.S. Const. art. VI, cl. 2, a state court "[cannot] validly enjoin a person from prosecuting an action *in personam* in a district or appellate court of the United States that has jurisdiction both of the parties and of the subject matter." *Donovan v. City of Dallas*, 377 U.S. 408, 408 (1964). *See also General Atomic Co. v. Felter*, 434 U.S. 12, 17-19 (1977) (per curiam); *Central States, Southeast and Southwest Areas Health and Welfare Fund v. Old Security Life Insurance Co.*, 600 F.2d 671, 675-77 (7th Cir. 1979).

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veyances), or 11 U.S.C. § 544 (debtor in possession is given rights of certain creditors under state law).

[20] The federal interest here is strengthened by the possibility that determination of these claims will effectively decide many other claims on which the bankruptcy court must rule. The claims at issue here are comprehensively interrelated with many other such claims and, indeed, with the Rehabilitator's claims against Baldwin, which are clearly subject to the jurisdiction of the bankruptcy court.

Baldwin's fraudulent and preferential transfer claims are *in personam* claims. *See Coffey v. Managed Properties, Inc.*, 85 F.2d 88, 90 (2d Cir. 1936); *Kalso Systemet, Inc. v. Jacobs*, 474 F. Supp. 666, 668-69 (S.D.N.Y. 1979). The bankruptcy court need not act directly on the *res* over which the state court asserts jurisdiction, but, as in all *in personam* matters, it can compel the transferee to return the property to the defrauded transferor. *See Massie v. Watts*, 10 U.S. (6 Cranch) 148, 160 (1810); *Sax v. Sax*, 294 F.2d 133, 136-37 (5th Cir. 1961); *Mandley v. Backer*, 121 F.2d 875, 876 (D.C. Cir. 1941).[21]

The prohibition against a state court enjoining federal court proceedings would apply even if the federal court proceedings were not clearly *in personam*. *Donovan*, 377 U.S. at 412; *Princess Lida v. Thompson*, 305 U.S. 456, 465-68 (1939). As this Court has held, "an action in the federal court to establish the validity or the amount of a claim constitutes no interference with a state court's possession or control of a res." *Princess Lida*, 305 U.S. at 467. Thus, regardless of whether the bankruptcy court could direct the physical return of the cash and stock fraudulently and preferentially transferred, it cannot be enjoined by the Arkansas court from considering (or at least deciding whether to consider) the validity and amount of Baldwin's claims.

This is particularly true where, as here, the state court has not adjudicated (and is not adjudicating) any claims to the property. As the first court to assume jurisdiction over the property, the Arkansas court, *arguendo*, may have exclusive jurisdiction over the *res*, but a federal court may adjudicate rights to the property "where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state

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[21] Baldwin's securities law and RICO claims are also *in personam* since they seek damages. *See Southwestern Bank & Trust Co. v. Metcalf State Bank*, 525 F.2d 140, 142-43 (10th Cir. 1975); *Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 508 (10th Cir.), *cert. denied*, 391 U.S. 905 (1968).

court is bound by the judgment to recognize the right adjudicated by the federal court." *Markham v. Allen*, 326 U.S. 490, 494 (1946). *See also United States v. Klein*, 303 U.S. 276, 281 (1938); *Barrett v. International Underwriters, Inc.*, 346 F.2d 345, 349 (7th Cir. 1965).

C. The Arkansas Supreme Court Erred In Finding Authority For The Injunction In Section 109 Of The Bankruptcy Code And The McCarran-Ferguson Act.

Absent express *congressional* authorization, the state court's injunction is invalid. In apparent recognition of this, the Arkansas Supreme Court looked to and relied upon the Bankruptcy Code provision excluding insurance companies from becoming debtors, 11 U.S.C. § 109(b) and (d), and the McCarran-Ferguson Act ("McCarran Act"), 15 U.S.C. §§ 1011-1015, as congressional support for the circuit court's action. Neither provision, however, authorizes issuance of the injunction.

Subsections 109(b) and (d) preclude insurance companies, banks, savings and loan associations and certain other entities from becoming "debtors" under the Bankruptcy Code—nothing more. They do not carve out a special exemption for insurance companies, whether in rehabilitation or not, from the jurisdiction otherwise vested in the bankruptcy court. Indeed, "when a bankruptcy court does not take action which is tantamount to reorganizing insurance companies or adjudging them as bankrupts, . . . Section 4 [now subsections 109(b) and (d)] does not preclude it from asserting jurisdiction over claims against insurance companies pursuant to other jurisdictional statutes." *In Re Equity Funding Corp. of America*, 396 F. Supp. 1266, 1274 (C.D. Cal.), *aff'd*, 519 F.2d 1274 (9th Cir. 1975).

Resolving the claims at issue here is in no way tantamount to reorganizing the insurance companies or adjudging them debtors. The bankruptcy court will neither set priorities to assets of the insurance companies nor inhibit the state rehabilitation process. The Arkansas

injunction thus gains no support from subsections 109(b) and (d).[22]

The Arkansas Supreme Court found the McCarran Act "[o]f even greater significance." (App. A, 6a.) It provides, in pertinent part: "No act of Congress shall be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance . . . unless such Act specifically relates to the business of insurance." 15 U.S.C. § 1012(b). Once again, the Arkansas court's reliance was misplaced.

The McCarran Act does not limit federal laws enacted pursuant to the Bankruptcy Clause; it only limits Congress' authority under the Commerce Clause, U.S. Const. art. I, § 8, cl. 3. *Western & Southern Life Insurance Co. v. Board of Equalization*, 451 U.S. 648, 653, 656 (1981). The McCarran Act addresses the relative authority of federal and state regulators over the "business of insurance." It was enacted in 1945 for the specific purpose of limiting *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944), which held for the first time that the writing of insurance was commerce and therefore subject to the antitrust laws.[23] State insur-

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[22] Moreover, if subsections 109(b) and (d) were read to confer exclusive jurisdiction over claims against insurance companies on a state rehabilitation court, a conflict would arise with 28 U.S.C.A. § 1334(d), which confers exclusive jurisdiction over debtor's property and the estate on the district court, when, as here, such property includes assets in the possession of insurance companies. It would also conflict with Section 1334(b), which provides that "[*n*]*otwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts*, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." On its face, this language precludes an injunction against a federal court that has original but not exclusive jurisdiction under title 11 by a court asserting that Congress has given it exclusive jurisdiction. Without a clear indication, it should not be assumed Congress intended such conflicts.

[23] *See* H.R. Rep. No. 143, 79th Cong., 1st Sess. 3 (1945), *reprinted in* 1945 U.S. Code Cong. Serv. 670, 671-72. The specific purpose to

ance officials were concerned that the decision might invalidate existing state taxation (due to the dormant Commerce Clause) and regulation (due to application of Commerce Clause powers) of the insurance industry. Congress therefore exempted state regulation of the "business of insurance" from limitation under the Commerce Clause, especially the federal antitrust laws. *Group Health & Life Insurance Co. v. Royal Drug Co.*, 440 U.S. 205, 217-24 (1979); *Prudential Insurance Co. v. Benjamin*, 328 U.S. 408, 429-30 (1946). It did not restore the preexisting blanket limitations on federal power, but rather carved out narrow protection for the "business of insurance." *Royal Drug*, 440 U.S. at 219-20. *See also Maryland Casualty Co. v. Cushing*, 347 U.S. 409, 413 (1954) (plurality) (conflict between the exclusive jurisdiction of a federal court sitting in admiralty and a state insurance law was "not touched" by *South-Eastern Underwriters*, and therefore the McCarran Act was "not relevant").

Congress' action to limit application of the Commerce Clause should not, without more, be read to effect a sweeping limitation on laws enacted by Congress pursuant to the Bankruptcy Clause. The McCarran Act has never before been applied to limit the jurisdiction of a bankruptcy court, and it was only through an overly broad reading of the Act ("to preserve [all insurance regulation] intact from any federal intrusion. . .") that the Arkansas Supreme Court was able to do so here. (*See* App. A, 6a.) The Arkansas court's reading of the Act directly conflicts with this Court's holding that "[i]nsurance companies may do many things which are subject to paramount federal regulation; only when they are engaged in the 'business of insurance' does the statute

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limit *South-Eastern Underwriters* was emphasized by Senator McCarran: "[W]e give to the States no more powers than those they previously had, and we take none from them." 91 Cong. Rec. 1442 (1945). *See also Western & Southern Life Insurance*, 451 U.S. at 653-54; *SEC v. National Securities, Inc.*, 393 U.S. 453, 459 (1969).

apply." *SEC v. National Securities, Inc.*, 393 U.S. 453, 459-60 (1969). Moreover, it flies in the face of 28 U.S.C.A. § 1334(b), enacted by Congress less than a year ago.[24] *See* p. 22 n.22 *supra.*

Even if the McCarran Act applies to legislation enacted under the Bankruptcy Clause, the Arkansas Supreme Court wrongly concluded that "[t]he Arkansas statute which authorizes the rehabilitation court to issue an injunction is a law enacted for 'the business of insurance' within the meaning of the McCarran-Ferguson Act." (App. A, 7a.) The Act's legislative history indicates that Congress did not intend to include injunctions issued by rehabilitation courts within the definition of the "business of insurance." The McCarran Act was based in large part on a bill and accompanying report submitted on behalf of the National Association of Insurance Commissioners ("NAIC"). *Royal Drug*, 440 U.S. at 221. The NAIC bill proposed to carve out from federal antitrust regulation seven specific anti-competitive practices of the insurance industry, 90 Cong. Rec. A4406 (1944), none of which is even remotely related to the rehabilitation of insolvent insurance companies. As ultimately enacted by Congress, the Act substituted the term "business of insurance" for the NAIC proposal in order to create an exemption that "is narrower than the bills which would have exempted specific practices." *Royal Drug*, 440 U.S. at 223 n.29.

This Court has held that the McCarran Act is directed only at intra-industry spreading of risk and ratemaking, and contractual and other matters directly related to the relationship between insurance companies and their policyholders. *Id.* at 215-16, 220-21; *Union Labor Life Insurance Co. v. Pireno*, 458 U.S. 119, 127-29 (1982). The Court has been "reluctant to extend the [§ 1012(b)]

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[24] "Notwithstanding any Act of Congress that confers exclusive jurisdiction on [other courts], the district courts shall have original . . . jurisdiction of all civil proceedings arising under title 11...."

exemption to . . . parties 'wholly outside the insurance industry.'" *Pireno*, 458 U.S. at 129 (quoting *Royal Drug*, 440 U.S. at 231).

In fact, courts frequently have rejected the contention that state rehabilitation proceedings themselves constitute the "business of insurance." *See Royal Drug*, 440 U.S. at 217, 230 n.38 (many aspects of insurance regulated by state law, such as liquidation, are not the "business of insurance" but rather are the "business of insurance companies"); *Central States*, 600 F.2d at 677 (rejecting contention that McCarran Act authorized state rehabilitation court injunction against federal litigation); *Langdeau v. United States*, 363 S.W.2d 327, 330-31 (Tex. Civ. App. 1962) (state statute regulating insurance companies in insolvency proceedings did not regulate "business of insurance").

Indeed, in two cases involving application of the antitrust laws to insurance companies, this Court has rejected the Arkansas Supreme Court's sweeping contention that the rehabilitation proceeding itself constitutes the "business of insurance" because it attempts to ensure that the insurance companies will have sufficient assets to cover their anticipated liabilities. (See App. A, 7a.) In *Royal Drug*, 440 U.S. at 216, and *Pireno*, 458 U.S. at 131-32, insurance companies maintained that their activities were an "integral part" of the insurer-insured relationship because they affected the cost of premiums and the administration of benefits and directly involved the "reliability," "interpretation" and "enforcement" of the insurance contract. *Royal Drug* involved the antitrust implications of pharmacy provider agreements that singled out certain pharmacies as outlets for discount drug purchases by policyholders. *Pireno* concerned the antitrust implications of a peer review system where health insurers conditioned benefits for chiropractic treatment on the approval of a committee composed of members of a chiropractors association. This Court held that the activities were not the "business of insurance" be-

cause policyholders are "basically unconcerned" with the particular arrangements the company has to make to ensure its compliance with the terms of the insurance contract. *Royal Drug*, 440 U.S. at 214. *See Pireno*, 458 U.S. at 132.[25]

Like the agreement and procedures at issue in *Royal Drug* and *Pireno*, the Arkansas rehabilitation proceeding is nothing more than an attempt to bolster the financial condition of the insurance companies so as to make good on their policies. If the Arkansas position is allowed to stand, it will have serious implications beyond the scope of this proceeding because virtually everything will constitute the "business of insurance," including anything that reduces expenses or labor costs, for they would increase the asset pool available to pay insureds.

The Arkansas Supreme Court's parochial view is at odds with current federal law as expressed in decisions routinely applying federal statutes to insurance companies undergoing rehabilitation, even when the federal action would create uncertainty about the assets available for rehabilitation.[26] The reasoning of the Arkansas Supreme Court would undermine the jurisdiction of federal courts over a broad range of activities.[27]

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[25] *See also Hahn v. Oregon Physicians Serv.*, 689 F.2d 840, 842-43 (9th Cir. 1982) ("courts have consistently applied the narrow definition of 'the business of insurance' enunciated in *Royal Drug*"), *cert. denied*, 103 S. Ct. 3115 (1983); *Proctor v. State Farm Mut. Auto. Ins. Co.*, 675 F.2d 308, 318 (D.C. Cir.) (*Royal Drug* has "significantly narrowed the scope of the term 'business of insurance' "), *cert. denied*, 459 U.S. 839 (1982).

[26] *See, e.g., Central States, Southeast and Southwest Areas Health and Welfare Fund v. Old Security Life Ins. Co.*, 600 F.2d 671, 676 (7th Cir. 1979) (despite state court injunction barring federal suits, federal court applied ERISA to insurance company undergoing rehabilitation); *Stoller v. Baldwin-United Corp.*, 1984 Fed. Sec. L. Rep. (CCH) ¶ 91,678, at 99,430 (S.D. Ohio 1984) (securities laws applied to insurance companies undergoing rehabilitation despite risk that adverse judgment would hinder rehabilitation plan).

[27] Federal courts have repeatedly taken a view in conflict with the Arkansas court, rejecting claims that the McCarran Act was

CONCLUSION

For all the foregoing reasons, a writ of certiorari should issue and the judgment and opinion of the Arkansas Supreme Court should be vacated or reviewed.

Respectfully submitted,

ROBERT J. WHITE
DAVID PETTIT
O'MELVENY & MYERS
400 South Hope Street
Los Angeles, CA 90071

ZOË E. BAIRD
Counsel of Record
JACOB M. LEWIS
JAMES P. NEHF
O'MELVENY & MYERS
1800 M Street, N.W.
Washington, DC 20036
(202) 457-5901

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intended to bar litigants from asserting federal rights in federal court. *See, e.g., MacKey v. Nationwide Ins. Cos.*, 724 F.2d 419, 421 (4th Cir. 1984) (Fair Housing and Civil Rights Acts); *USLIFE Corp. v. U.S. Life Ins. Co.*, 560 F. Supp. 1302, 1308 (N.D. Tex. 1983) (patent infringement claims under Lanham Act); *Women in City Gov't United v. New York*, 515 F. Supp. 295, 303 (S.D.N.Y. 1981) (Title VII sex discrimination claims, noting that the "Act should not be applied indiscriminately to subsequent federal legislation, the overriding purpose of which is not the regulation of commerce but the protection of other important federal interests"); *Ben v. General Motors Acceptance Corp.*, 374 F. Supp. 1199, 1203 (D. Colo. 1974) (civil rights claims).